

FLATHEAD COUNTY PLANNING AND ZONING OFFICE
DAVID AND ANNA MARIE BAILEY
ZONING MAP AMENDMENT REPORT (#FZC-16-13)
NOVEMBER 30, 2016

A report to the Flathead County Planning Board and Board of Commissioners regarding a request by David and Anna Marie Bailey for a zoning map amendment in the Rural Whitefish Zoning District. The proposed amendment would change the zoning of the subject property from 'SAG-10 Suburban Agricultural' to 'SAG-5 Suburban Agricultural.'

The Flathead County Planning Board will conduct a public hearing on the proposed zoning map amendment on December 14, 2016 at 6:00 P.M. in 2nd Floor Conference Room of the South Campus Building located at 40 11th Street West in Kalispell. A recommendation from the Planning Board will be forwarded to the County Commissioners for their consideration. In accordance with Montana law, the Commissioners will hold a public hearing on the proposed zoning map amendment.

Documents pertaining to the zoning map amendment are available for public inspection in the Flathead County Planning and Zoning Office located at 40 11th Street West in Kalispell. Prior to the Commissioner's public hearing, documents pertaining to the zoning map amendments will also be available for public inspection in the Office of the Board of Commissioners at 800 South Main Street in Kalispell.

I. APPLICATION REVIEW UPDATES

A. Planning Board

This space will contain an update regarding the December 14, 2016 Flathead County Planning Board review of the proposal.

B. Commission

This space will contain an update regarding the Flathead County Commissioners review of the proposal.

II. GENERAL INFORMATION

A. Application Personnel

i. Owner/Applicants

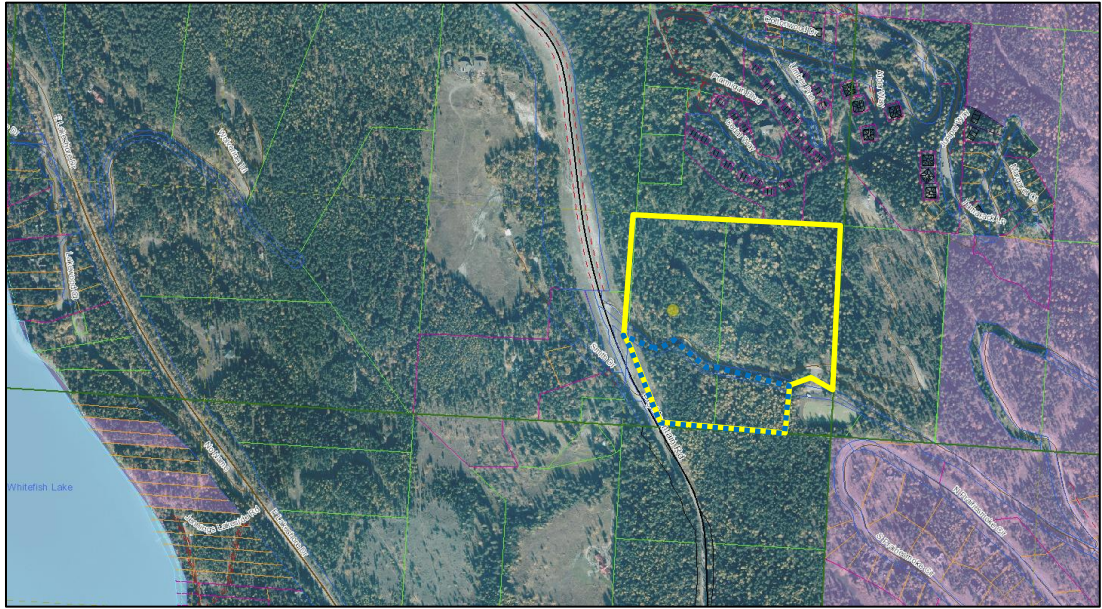
David and Anna Marie Bailey
PO Box 2655
Kalispell, MT 59903

B. Subject Property Location and Legal Description

The subject property is located at 121 and 135 Whitefish Lookout Road just outside Whitefish, MT (see Figure 1 below). The property is approximately 9.0 acres in size and can legally be described as the portion located south of Whitefish Lookout Road on:

Parcel A and Parcel B of Certificate of Survey No. 11579 in that portion of the Southeast Quarter of Section 11, Township 31 North, Range 22 West, Flathead County, Montana. Excepting therefrom that part deeded to the State of Montana in Bargain and Sale Deed recorded April 26, 2005 as Instrument No. 2005-116-0801-9.

Figure 1: Subject property outlined in yellow (portion to be rezoned outlined in blue)



C. Proposed Zoning Map Amendment

The subject property is currently zoned ‘SAG-10 Suburban Agricultural’ and located within the Rural Whitefish Zoning District (see Figure 2 below). As depicted in Figure 3 below, the applicant has requested the zoning map amendment for the portion of the property located south of the road to zone it ‘SAG-5 Suburban Agricultural.’

Figure 2: Current zoning applicable to subject property (highlighted in blue, portion to be rezoned in yellow)

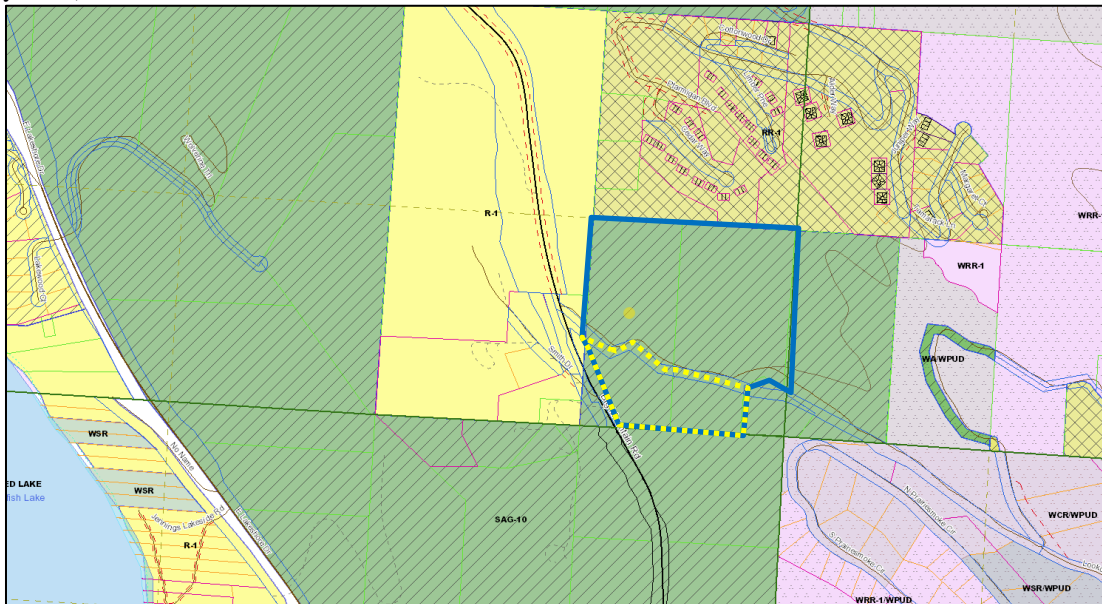
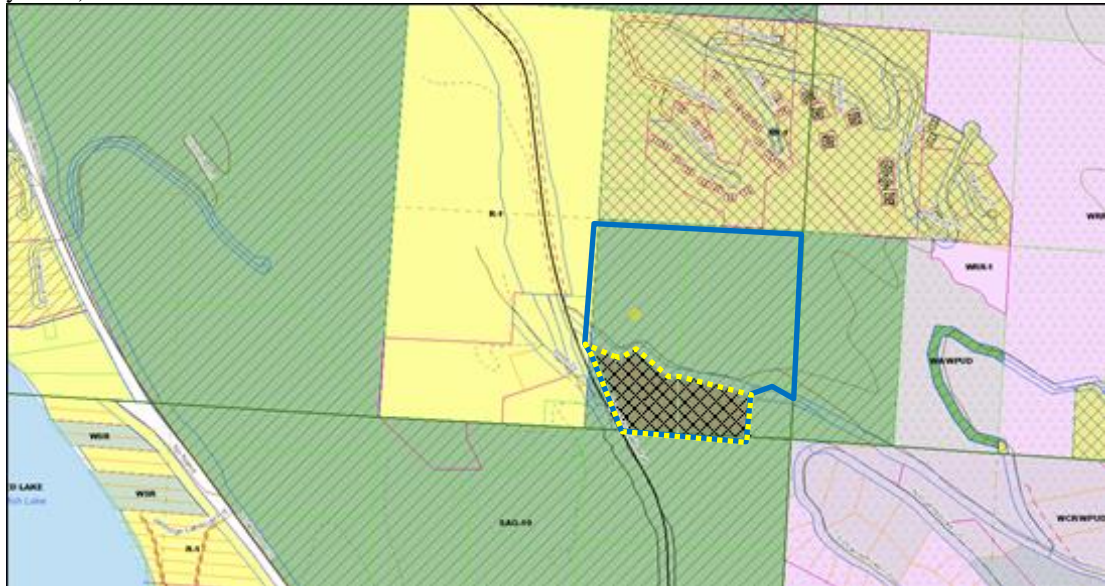


Figure 3: Proposed zoning on the subject property (highlighted in blue, portion to be rezoned in yellow)



The SAG-10 designation is defined in Section 3.07 of the Flathead County Zoning Regulations (FCZR) as, ‘A district to provide and preserve agricultural functions and to provide a buffer between urban and unlimited agricultural uses, encouraging separation of such uses in areas where potential conflict of uses will be minimized, and to provide areas of estate-type residential development.’

The SAG-5 designation is defined in Section 3.08 FCZR as, ‘A district to provide and preserve smaller agricultural functions and to provide a buffer between urban and unlimited agricultural uses, encouraging separation of such uses in areas where potential conflict of uses will be minimized, and to provide areas of estate-type residential development.’

D. General Character of and Reason for Amendment

The subject property is approximately 35.69 acres but only the 9.0 acre portion located south Whitefish Lookout Road is included in the proposed zoning map amendment. The property is located just off Big Mountain Road in a heavily forested area of the county. The property is generally sloped with the northeast corner being the highest point and the southwest corner along Big Mountain Road being the lowest point. The elevation change from the lowest point to the highest point of the entire property is approximately 240 feet. And the elevation change on the portion of the property located south of Whitefish Lookout Road is approximately 140 feet.

The application states, “Requesting zoning change on portion of property south of and abutting Whitefish Lookout Road to SAG-5 while leaving the rest in SAG-10 as it currently exists. Surrounding neighborhoods have much higher residential density.” The proposed zone change would allow for the 9.0 acre portion south of the road to split off the other two parcels creating a third parcel.

Figure 4: Aerial view of subject property (outlined in blue, portion to be rezoned in yellow)



E. Adjacent Zoning and Character of the Overall Zoning District

The subject property is located within the Rural Whitefish Zoning District and surrounded by suburban agricultural and residential zones (see Figure 5). The Rural Whitefish Zoning District has many different zones but nearest the subject property is SAG-10, RR-1 and R-1 zoning. The property is also located near the City of Whitefish; the closest Whitefish zoning are '*WCR/PUD Country Residential*' and '*WRR-1 Low Density Resort Residential*.'

The land to the north of the subject property is Ptarmigan Village which contains multi-family residential. The properties zoned SAG-10 and R-1 are generally large lots with single family homes. The WCR zoning to the south contains single family residential on 1-2 acre lots. The WRR-1 properties do not appear to be developed at this time. The area around the property is generally forested with areas of steep slopes.

The map displays the following features:

- Zoning Districts:** SAG-10, AG-20, R-1, R-2.5, R-3, R-2, BR-4, BMRR, WSR, WWR, WRB, WCR, WLR, WRR, WB, WA, WWPUD.
- Roads:** Highway 91, Highway 168, Highway 160, Northwoods Dr, Cedarwood Dr, Van Meter Rd, Morgan Rd, Johnson Rd, Green Rd, Elm St, Willow Ave, Kenton Ave, Birch St, Main St, Washington St, Lincoln St, Madison St, Oak St, Maple St, Pine St, Spruce St, Fir St, Hemlock St, Cypress St, Redwood St, Juniper St, Sycamore St, Ash St, Hickory St, Walnut St, Chestnut St, Pecan St, Magnolia St, Dogwood St, Elder St, Hawthorn St, Linden St, Basswood St, Ironwood St, Boxelder St, Gambel St, American Elm St, Norway Spruce St, Korean Spruce St, Japanese Spruce St, Chinese Spruce St, Korean Pine St, Japanese Pine St, Chinese Pine St, American Cedar St, Korean Cedar St, Japanese Cedar St, Chinese Cedar St, American Fir St, Korean Fir St, Japanese Fir St, Chinese Fir St, American Spruce St, Korean Spruce St, Japanese Spruce St, Chinese Spruce St, American Pine St, Korean Pine St, Japanese Pine St, Chinese Pine St, American Cedar St, Korean Cedar St, Japanese Cedar St, Chinese Cedar St, American Fir St, Korean Fir St, Japanese Fir St, Chinese Fir St.
- Bodies of Water:** Whitefish Lake, Unzoned Lake.
- Other Features:** Scenic Corridor, Unzoned Area, Various smaller lots and parcels.

Sewer: Whitefish County Water and Sewer
Water: Whitefish County Water and Sewer

Electricity:	Flathead Electric Cooperative
Natural Gas:	Northwestern Energy
Telephone:	CenturyTel
Schools:	Whitefish School District Whitefish High School District
Fire:	Whitefish Rural Fire District
Police:	Flathead County Sheriff's Office

G. Criteria Used for Evaluation of Proposed Amendment

Map amendments to zoning districts are processed in accordance with Section 2.08 of the Flathead County Zoning Regulations. The criteria for reviewing amendments are found in Section 2.08.040 of the Flathead County Zoning Regulations and 76-2-203 M.C.A.

H. Compliance With Public Notice Requirements

Adjacent property notification regarding the proposed zoning map amendment was mailed to property owners within 150 feet of the subject property on November 23, 2016. Legal notice of the Planning Board public hearing on this application was published in the November 27, 2016 edition of the Daily Interlake.

Public notice of the Board of County Commissioners public hearing regarding the zoning map amendment will be physically posted on the subject property and within the zoning district according to statutory requirements found in Section 76-2-205 [M.C.A.]. Notice will also be published once a week for two weeks prior to the public hearing in the legal section of the Daily Interlake. All methods of public notice will include information on the general character of the proposed change, the date, time and location of the public hearing before the Flathead County Commissioners on the requested zoning map amendment.

I. Agency Referrals

Referrals were sent to the following agencies on October 13, 2016:

- Bonneville Power Administration
- City of Whitefish Planning Department
- Flathead City-County Health Department; Environmental Health Services
- Flathead County Road and Bridge Department
- Flathead County Sheriff
- Flathead County Solid Waste
- Flathead County Weeds and Parks Department
- Montana Fish Wildlife and Parks
- Whitefish Rural Fire District

III. COMMENTS RECEIVED

A. Public Comments

As of the date of the completion of this staff report, no public comments have been received regarding the requested zoning map amendment. It is anticipated any member of the public wishing to provide comment on the proposed zoning map amendment may do so at the Planning Board public hearing scheduled for December 14, 2016 and/or the Commissioner's Public Hearing. Any written comments received

following the completion of this report will be provided to members of the Planning Board and Board of Commissioners and summarized during the public hearing(s).

B. Agency Comments

The following is a summarized list of agency comment received as of the date of the completion of this staff report:

- Bonneville Power Administration
 - Comment: “BPA does not have any objections to the approval of this request at this time.” Email dated October 21, 2016.
- Flathead City-County Health Department
 - Comment: “They have 35 acres of property currently zoned SAG 10 and want to create three parcels. Is at least one of the parcels to be created less than 10 acres? In the absence of a survey it is difficult to understand what’s actually happening. What am I missing?” Email dated October 25, 2016.
- City of Whitefish Planning Department
 - Comment: “The proposed zone change from Sag 10 Suburban Agricultural to Sag 5 Suburban Agricultural proposed by David and Anna Marie Bailey for 121 and 135 Whitefish Lookout Road is not consistent with Whitefish’s 2007 Whitefish City-County Growth Policy Future Land Use Map. The property’s Future Land Use is designated as Rural, which affords 10 to 20 acre minimum lot sizes. Thank you for the opportunity to comment.” Email dated October 20, 2016.
- Flathead County Road & Bridge Department
 - Comment: “At this point the County Road Department does not have comments on this request.” Letter dated October 20, 2016.
- Flathead County Solid Waste District
 - Comment: “The District requests all solid waste generated at the proposed location be hauled by a private hauler. North Valley Refuse is the licensed (PSC) Public Service Commission private hauler in this area.” Letter received October 21, 2016.
- Montana Fish Wildlife and Parks
 - Comment: “Montana Fish, Wildlife & Parks has no comment with regard to the above-referenced zone change request.” Letter received October 21, 2016.
- Flathead County Environmental Health
 - Comment: “We have no objection to the proposed zone change request.” Letter dated October 27, 2016.

IV. EVALUATION OF PROPOSED AMENDMENT

A. Build Out Analysis

Once a specific zoning designation is applied in a certain area there are certain land uses that are permitted or conditionally permitted. A build-out analysis is performed to examine the maximum potential impacts of full build-out of those uses. The build-

out analysis is typically done looking at maximum densities, permitted uses, and demands on public services and facilities. Build-out analyses are objective and are not best or worst case scenarios. Without a build-out analysis to establish a foundation of understanding, there is no way to estimate the meaning of the proposed change to neighbors, the environment, future demands for public services and facilities and any of the evaluation criteria, such as impact to transportation systems. Build-out analyses are simply establishing the meaning of the zoning map amendment to the future of the community to allow for the best possible review.

i. Current Zoning

The property is currently zoned ‘SAG-10 Suburban Agricultural.’ SAG-10 is defined in Section 3.07 FCZR as, ‘*A district to provide and preserve agricultural functions and to provide a buffer between urban and unlimited agricultural uses, encouraging separation of such uses in areas where potential conflict of uses will be minimized, and to provide areas of estate-type residential development.*’ The following is a list of permitted uses in an SAG-10 zone (Section 3.07.020 FCZR):

1. *Agricultural/horticultural/silvicultural use.*
2. *Cellular tower.*
3. *Class A and Class B manufactured home.*
4. *Cluster housing.*
5. *Dairy products processing, bottling, and distribution.*
6. *Day care home.*
7. *Dwelling, single-family.*
8. *Dwelling unit, accessory (ADU).*
9. *Guest house.*
10. *Home occupation.*
11. *Homeowners park and beaches.*
12. *Livestock*
13. *Nursery, landscaping materials.*
14. *Park and publicly owned recreational facility.*
15. *Produce stand.*
16. *Public transportation shelter station.*
17. *Public utility service installation.*
18. *Ranch employee housing.*
19. *Riding academy, rodeo arena.*
20. *Stable, public and private.*

The following uses are listed as conditional uses in an ‘SAG-10’ zone (Section 3.07.030 FCZR). An asterisk designates conditional uses that may be reviewed administratively and two asterisks designate conditional uses that may be reviewed administratively for eight or fewer units:

1. *Airfield.*
2. *Aircraft hangars when in association with properties within or adjoining an airport/landing field.**
3. *Animal hospital, veterinary clinic.*
4. *Bed and breakfast establishment.*
5. *Camp and retreat center.*
6. *Caretaker’s facility.**

7. Cemetery, mausoleum, columbarium, crematorium.
8. Church and other place of worship.
9. Community center building operated by a non-profit agency.
10. Community residential facility.**
11. Contractor's storage yard.*
12. Dwelling, family hardship.*
13. Electrical distribution station.
14. Extractive industry.
15. Golf course.
16. Golf driving range.
17. Kennel, commercial.*
18. Manufactured home park.
19. Recreational facility, low-impact.
20. School, primary and secondary.
21. Temporary building or structure.*
22. Water and sewage treatment plant.
23. Water storage facility.

The bulk and dimensional standards for SAG-10 zoning requires a setback for principal structures of 20 feet from all boundary lines or right-of-ways. The minimum setback requirement for accessory structures is 20 feet for the front and side-corner and 5 feet for the rear and side. There are also provisions for reduced setbacks for non-conforming lots when the width of the lot is less than 200 feet, 150 feet or 50 feet. A 20 foot setback is required from streams, rivers and unprotected lakes which do not serve as property boundaries and an additional 20 foot setback is required from county roads classified as collector or major/minor arterials.

The proposed SAG-10 zoning requires a minimum lot area of 10 acres. The subject property totals approximately 9 acres and under the current SAG-10 zoning zero additional lots could be created.

ii. **Proposed Zoning**

As previously stated, the applicant is proposing 'SAG-5 Suburban Agricultural' zoning. SAG-5 is defined in Section 3.08.010 FCZR as, "A district to provide and preserve smaller agricultural functions and to provide a buffer between urban and unlimited agricultural uses, encouraging separation of such uses in areas where potential conflict of uses will be minimized, and to provide areas of estate-type residential development." The following is a list of permitted uses in an SAG-5 zone (Section 3.08.020 FCZR):

1. Agricultural/horticultural/silvicultural use.
2. Class A and Class B manufactured home (See Chapter VII – Definitions).
3. Cluster housing (See Chapter V – Performance Standards).
4. Day care home.
5. Dwelling, single-family.
6. Dwelling unit, accessory (ADU).
7. Guest house.
8. Home occupation.

9. *Homeowners park and beaches.*
10. *Livestock*
11. *Nursery, landscaping materials.*
12. *Park and publicly owned recreational facility.*
13. *Produce stand.*
14. *Public transportation shelter station.*
15. *Public utility service installation.*
16. *Stable, private.*

The following uses are listed as conditional uses in an 'SAG-5' zone (Section 3.08.030 FCZR). An asterisk designates conditional uses that may be reviewed administratively and two asterisks designate conditional uses that may be reviewed administratively for eight or fewer units:

1. *Airfield.*
2. *Aircraft hangars when in association with properties within or adjoining an airport/landing field.**
3. *Animal hospital, veterinary clinic.*
4. *Bed and breakfast establishment.*
5. *Camp and retreat center.*
6. *Caretaker's facility.**
7. *Cellular tower.**
8. *Cemetery, mausoleum, columbarium, crematorium.*
9. *Church and other place of worship.*
10. *Community center building operated by a non-profit agency.*
11. *Community residential facility.***
12. *Contractor's storage yard (See Chapter IV – Conditional Use Standards).**
13. *Dwelling, family hardship.**
14. *Electrical distribution station.*
15. *Extractive industry.*
16. *Golf course.*
17. *Golf driving range.*
18. *Kennel, commercial.*
19. *Manufactured home park.*
20. *Recreational facility, high-impact.*
21. *Recreational facility, low-impact.*
22. *Recreational vehicle park.*
23. *Riding academy and rodeo arena.*
24. *School, primary and secondary.*
25. *Stable, public.*
26. *Temporary building or structure.**
27. *Water and sewage treatment plant.*
28. *Water storage facility.*

The bulk and dimensional standards under SAG-5 zoning a setback for principal structures of 20 feet from the all boundary lines or right-of-ways. The minimum setback requirement for accessory structures is 20 feet for the front and side-corner and 5 feet for the rear and side. There are also provisions for reduced

setbacks for non-conforming lots when the width of the lot is less than 200 feet, 150 feet or 50 feet. A 20 foot setback is required from streams, rivers and unprotected lakes which do not serve as property boundaries and an additional 20 foot setback is required from county roads classified as collector or major/minor arterials.

The proposed SAG-5 zoning requires a minimum lot area of 5 acres. The subject property totals 9.0 acres and under the proposed SAG-5 zoning 1 additional lot could be created.

In summary, the bulk and dimensional requirements are the same in the SAG-10 and the SAG-5, the zoning map amendment would allow uses that are typical of suburban agricultural zoning districts and similar to uses that are allowed under the existing SAG-10 zoning and two additional lots could be created under the proposed SAG-5 zone.

B. Evaluation of Proposed Amendment Based on Statutory Criteria (76-2-203 M.C.A. and Section 2.08.040 Flathead County Zoning Regulations)

i. Whether the proposed map amendment is made in accordance with the Growth Policy/Neighborhood Plan.

The proposed zoning map amendment falls within the jurisdiction of the Flathead County Growth Policy, adopted on March 19, 2007 (Resolution #2015 A) and updated October 12, 2012 (Resolution #2015 R).

The Flathead County Growth Policy Designated Land Uses Map identifies the subject property as 'Suburban Agricultural.' The proposed Suburban Agricultural zoning classification would appear to comply with the current Suburban Agricultural designation. Chapter 10 Part 3: Land Uses Maps of the Growth Policy under the heading Designated Land Use Maps specifically states, "This map depicts areas of Flathead County that are legally designated for particular use. This is a map which depicts existing conditions. The areas include zoning districts which are lumped together by general use rather than each specific zone and neighborhood plan. Further information on particular land uses in these areas can be obtained by consulting the appropriate zoning regulations or neighborhood plan document. The uses depicted are consistent with the existing regulations and individual plan documents. This map may be changed from time to time to reflect additional zoning districts, changes in zoning districts, map changes and neighborhood plans as they are adopted. Since this map is for informational purposes, the Planning Staff may update the same to conform to changes without the necessity of a separate resolution changing this map." Staff interprets this to mean the Designated Land Use Map is not a future land use map that implements policies, but rather a reflection of historic land use categories. If the zoning map amendment is approved the Designated Land Use Map can be updated by staff to reflect changes made by the County Commissioners based on policies, rather than maps in the document.

Following is a consideration of goals and policies which appear to be applicable to the proposed zone change, to determine if the proposal complies with the Growth Policy:

- ❖ **G.2** – *Preserve the rights of property owners to the use, enjoyment and value of their property and protect the same rights for all property owners.*
 - The application states, “Approval of the zone change would affirm another important policy being the protection of private property rights.
- ❖ **G.4** – *Preserve and protect the right to farm and harvest as well as the custom, culture, environmental benefits and character of agriculture and forestry in Flathead County while allowing existing landowners flexibility of land uses.*
 - **P.4.2** – *Identify lands most suited to agriculture (appropriate soils, access to water, shape and size of parcel, etc.).*
 - **P.4.3** – *Identify a desirable gross density for rural residential development that retains land value, preserves the agricultural character of the community and allows for efficient provision of government services (law enforcement, fire protection, transportation, etc).*
 - The zoning map amendment allows greater flexibility to the land owner while still allowing agriculture and forestry uses. The property is currently not used for agriculture and could be used for agriculture in the proposed SAG-5 or existing SAG-10 zone.
- ❖ **G.8** – *Safe, healthy residential land use densities that preserve the character of Flathead County, protect the rights of landowners to develop land, protect the health, safety, and welfare of neighbors and efficiently provide local services.*
 - The SAG-5 designation would allow for development at densities of 1 dwelling unit per 5 acres and would likely not require public services.
- ❖ **G.23** – *Maintain safe and efficient traffic flow and mobility on county roadways.*
 - **P.23.2** – *Limit private driveways from directly accessing arterials and collector roads to safe separation distances.*
 - **P.23.4** – *Recognize areas in proximity to employment and retail centers as more suitable for higher residential densities and mixed use development.*
 - This report contains discussion on the proposals potential burden on transportation below.
- ❖ **G.31** – *Growth that does not place unreasonable burden on the school district to provide quality education.*
 - Further discussion is contained below in this report on the adequate provision of schools below.
- ❖ **G.32** – *Maintain consistently high level of fire, ambulance and emergency 911 response services in Flathead County as growth occurs.*
- ❖ **G.33** – *Maintain a consistently high level of law enforcement services in Flathead County as growth occurs.*

- This report contains discussion on the adequacy of emergency service below.

Finding #1: The proposed zoning map amendment generally complies with the Flathead County Growth Policy because applicable goals, policies and text appear to generally support the request and the Suburban Agriculture land use designation identified by the Designated Land Use Map portrays only zoning which was established at the time the map was created and is not a future land use map.

ii. Whether the proposed map amendment is designed to:

1. Secure safety from fire and other dangers;

The subject property is located on Whitefish Lookout Road which will be used as emergency access. Whitefish Lookout Road is a paved two lane local county road within a 60 foot easement.

The subject property is located within the Whitefish Rural Fire District. According to the applicant, “It is on the border of the Whitefish city fire district and the Big Mountain fire district and according to Fire Chief Thomas Kennely in the event of a fire both departments would respond.” The nearest fire station is located approximately 2.9 miles north of the property on Big Mountain Road and the nearest fire station within Whitefish is located 5.1 miles to the south.

The subject property is located within the Wildland Urban Interface (WUI) and the property is located in the County Wide Priority Area and designated as medium high. The majority of the subject property is wooded along with the neighboring hillside. It is likely that when the property is subdivided thinning would be required.

FEMA FIRM Panel 30029C 1080G designates the property as unshaded Zone X. Zone X is an area determined to be outside the 0.2% annual chance floodplain.

Finding #2: The proposed zoning map amendment will likely not impact safety from fire and other danger because even though the property is located in the WUI and a county wide priority area, the property would likely be served by both the Whitefish Rural Fire Department and Big Mountain Fire Department, thinning would be required if the property is subdivided and the property is located outside the 100-year floodplain.

2. Promote public health, public safety, and general welfare;

The subject property is located within the Whitefish Rural Fire District. According to the applicant, “It is on the border of the Whitefish city fire district and the Big Mountain fire district and according to Fire Chief Thomas Kennely in the event of a fire both departments would respond.” The nearest fire station is located approximately 2.92 miles north of the property on Big Mountain Road and the nearest fire station within Whitefish is located 5.1 miles to the south. The property is also served by the Flathead County

Sherriff's Office and the Sherriff's office would respond in the event of an emergency.

The subject property is located on Whitefish Lookout Road which will be used as emergency access. Whitefish Lookout Road is a paved two lane local county road within a 60 foot easement. Whitefish Lookout Road would provide for adequate access for emergency services.

The intent of the existing 'SAG-10 Suburban Agricultural' is to provide and preserve agricultural functions and to provide a buffer between urban and unlimited agricultural use. The purpose of the proposed 'SAG-5 Suburban Agricultural' is to provide and preserve smaller agricultural functions and to provide a buffer between urban and unlimited agricultural use. The property is located near the City of Whitefish. The existing zoning does provide a buffer and the proposed zoning would continue to provide a buffer between urban densities to the north, east and west and the suburban agriculture to south.

Finding #3: The proposed amendment appears to not have a negative impact on public health, public safety and general welfare because the property is served by the Flathead County Sheriff and likely both the Whitefish Rural Fire Department and Big Mountain Fire Department and the SAG-5 zoning would continue to serve as a buffer between urban densities and suburban agriculture densities.

3. Facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

The subject property is accessed via Whitefish Lookout Road from Big Mountain Road. Whitefish Lookout Road is a paved two lane local county road within a 60 foot easement. Big Mountain Road is a paved 2 lane MDT maintained highway within a 60 foot easement. Comments from the Flathead County Road and Bridge Department states, "At this point the County Road Department does not have comments on this request."

The Flathead County Road and Bridge Department does not have recent traffic counts for Whitefish Lookout Road. With the proposed zoning the subject property could be divided into one additional lot. Based on projected land uses arising from the proposed zone change, this proposal could generate an additional 10 ADT. The projected traffic counts would likely not impact Whitefish Lookout Roads ability to facilitate adequate transportation.

According to the applicant, "Private well water and an approved septic system will service the property."

Comments received from the Flathead City-County Health Department state, "We have no objection to the proposed zone change request."

Further division of land and/or new uses will likely require review under the Sanitation and Subdivision Act through the Flathead City-County Health Department and the Montana Department of Environmental Quality.

The subject property is located within the Whitefish Elementary School District and Whitefish High School District. The Whitefish Elementary School District has seen a decline in student enrollment of 6% over the last ten years but an increase of 8% between 2014 and 2015. Whitefish High School District student enrollment has seen a decrease of 31% over the last ten years and a decrease of 2% between 2014 and 2015. It is anticipated that the school would have capacity should any growth occur as a result of the proposed zoning map amendment as only one additional lot would be created.

The zoning map amendment would change the current minimum lot size from 10 acres to a smaller 5 acres on the subject property. It is anticipated subsequent future subdivision would require review and parkland would not be required at that time because the lots created would be greater than five gross acres in size. The property is located on Big Mountain with various parks, natural areas, and recreational opportunities within a short drive of the subject property.

Finding #4: The proposed amendment would facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements because the property is accessed via Whitefish Lookout Road, the Road and Bridge Department did not have any concerns regarding the proposal, Whitefish Lookout Road could accommodate the slight increase in traffic, any new development would require review through the Sanitation in Subdivision Act, it is anticipated that the school districts would have capacity and 5 acre lots would not require parkland during the subdivision review process.

iii. In evaluating the proposed map amendment, consideration shall be given to:

1. The reasonable provision of adequate light and air;

The application states, "Setbacks in the current SAG 10 and the proposed SAG 5 zones are identical with 20' front, back, side and corner setbacks in each zone. So the zone change should have minimal impact on light and air."

Any additional lots created or structures constructed would be required to meet the bulk, dimensional, permitted lot coverage and minimum lot area requirements of the SAG-5 zoning classification. The maximum building height within the proposed SAG-5 zone is 35 feet and the maximum building height of the existing SAG-10 zone is 35 feet.

The bulk and dimensional requirements under SAG-5 zoning requires a setback from the boundary line of 20 feet for the front, rear, side and side-corner for the principal structure. The minimum setback requirement for accessory structures is 20 feet for the front and side-corner and 5 feet from the rear and side. There are also provisions for reduced setbacks for non-conforming lots when the width of the lot is less than 200 feet, 150 feet or 50 feet. A 20 foot setback is required from streams, rivers and unprotected lakes which do not serve as property boundaries and an additional 20 foot setback is required from county roads classified as collector or major/minor arterials. The setbacks for the proposed zoning classification are identical to those of

the current zoning. The bulk and dimensional requirements for the SAG-5 designation have been established to provide for a reasonable provision of light and air.

Finding #5: The proposed zoning map amendment would provide adequate light and air to the subject property because future development would be required to meet the bulk, dimensional, setbacks and lot coverage requirements within the proposed SAG-5 designation.

2. The effect on motorized and non-motorized transportation systems;

As previously stated, the subject property is accessed via Whitefish Lookout Road from Big Mountain Road. Whitefish Lookout Road is a paved two lane local county road within a 60 foot easement. Big Mountain Road is a paved 2 lane MDT maintained highway within a 60 foot easement. Comments from the Flathead County Road and Bridge Department states, “At this point the County Road Department does not have comments on this request.”

The Flathead County Road and Bridge Department does not have recent traffic counts for Whitefish Lookout Road. With the proposed zoning the subject property could be divided into one additional lot. Based on projected land uses arising from the proposed zone change, this proposal could generate an additional 10 ADT. The projected traffic counts would likely not impact Whitefish Lookout Roads ability to facilitate adequate transportation.

There is no existing bike/pedestrian facilities currently located on Whitefish Lookout Road and Big Mountain Road, the Flathead County Trails Plan designates Big Mountain Road as a proposed connector. If the property is subsequently developed, a bike/pedestrian easement would be required.

Finding #6: Effects on the motorized and non-motorized transportation system will be minimal because the property is accessed via Whitefish Lookout Road, the Road and Bridge Department did not have any concerns regarding the proposal, Whitefish Lookout Road could manage the slight increase in traffic, and a future subdivision would require a bike/pedestrian easement on Big Mountain Road.

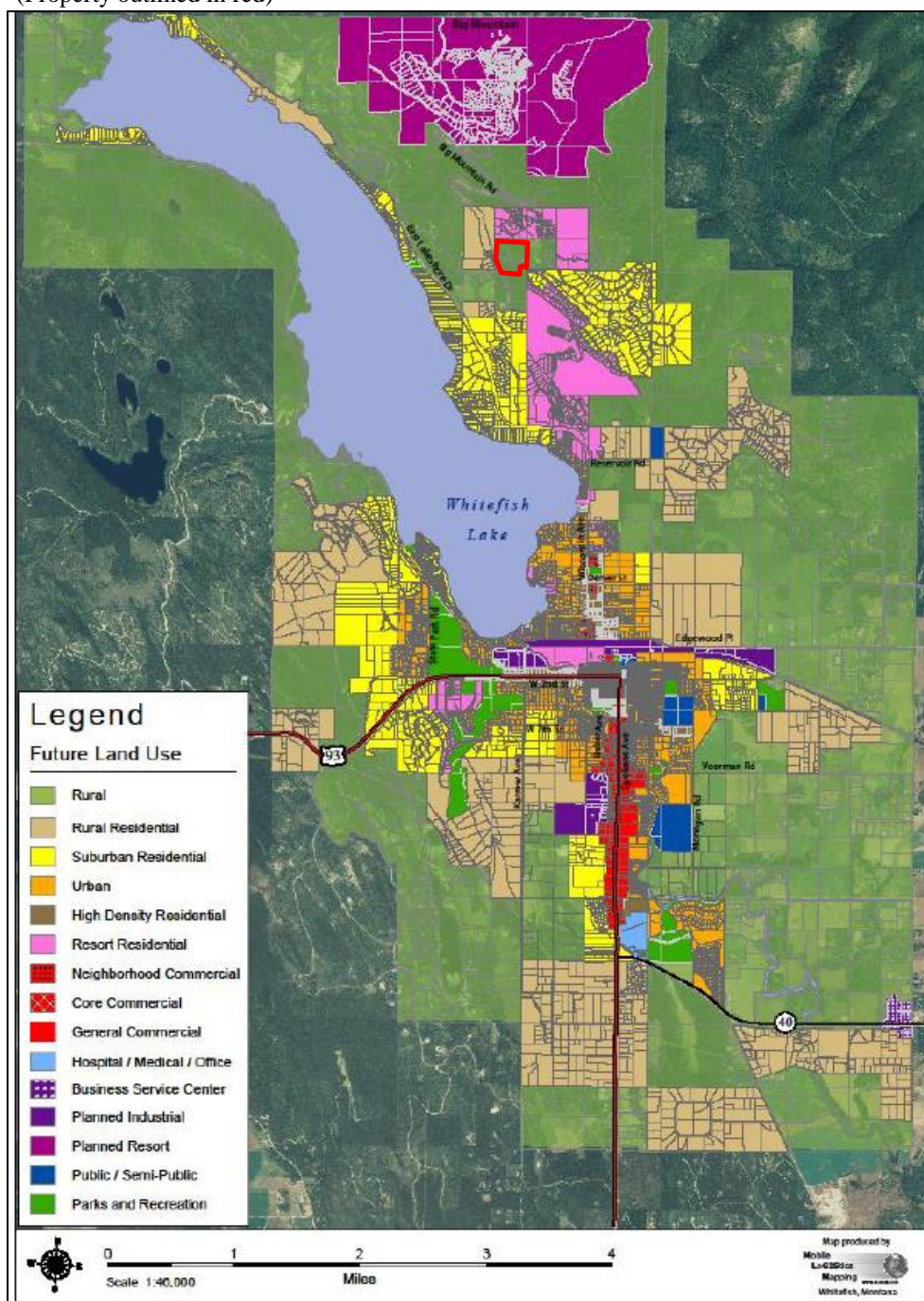
3. Compatible urban growth in the vicinity of cities and towns (that at a minimum must include the areas around municipalities);

The subject property is near the border of the City of Whitefish. Comments from the City of Whitefish indicate, “The proposed zone change from Sag 10 Suburban Agricultural to Sag 5 Suburban Agricultural proposed by David and Anna Marie Bailey for 121 and 135 Whitefish Lookout Road is not consistent with Whitefish’s 2007 Whitefish City-County Growth Policy Future Land Use Map. The property’s Future Land Use is designated as Rural, which affords 10 to 20 acre minimum lot sizes. Thank you for the opportunity to comment.”

The Whitefish City-County Growth Policy Future Land Use Map designated the property as ‘*Rural*.’ According to the Whitefish City-County Growth Policy the ‘*Rural*’ land use designation is defined as, “*Open lands with decidedly rural character, including farmlands, pasture lands, timber*

harvesting and management areas, and forest lands generally fall under this designation. Agricultural and timber management are generally allowed, but residential densities are extremely low. This designation includes “important farmlands” as defined by National Resources Conservation Service criteria. Zoning is mainly WA-10 and WA-20.” The City of Whitefish does not have a WA-10 or WA-20 zone list in their ordinance but does have a WA zone with a 15 acre minimum lot size.

Figure 6: Southern portion of City of Whitefish Growth Policy Future Land Use Map (Property outlined in red)



The SAG-5 designation would allow for farmlands, pasture lands and timber harvesting as permitted uses on the property while only adding one lot. SAG-5 is defined in Section 3.08.010 FCZR as, “*A district to provide and preserve smaller agricultural functions and to provide a buffer between urban and unlimited agricultural uses, encouraging separation of such uses in areas where potential conflict of uses will be minimized, and to provide areas of estate-type residential development.*” Additionally, on a previous zone change located within the Whitefish City-County Growth Policy area with a similar ‘*Rural*’ designation, the County Commissioners stated that the SAG-5 zoning is a rural county zoning designation and therefore believe it to be compatible with the Whitefish City-County Growth Policy.

Finding #7: The proposed zoning map amendment does appear to be compatible with urban growth in the vicinity of cities and towns because the Whitefish City-County Growth Policy designates the land as rural, would allow for farmlands, pasture lands and timber harvesting as permitted uses and SAG-5 is defined as a district to provide and preserve smaller agricultural functions and to provide a buffer between urban and unlimited agricultural uses, encouraging separation of such uses.

4. The character of the district(s) and its peculiar suitability for particular uses;

The character of the district and its peculiar suitability for particular uses can best be addressed using the “three part test” established for spot zoning by legal precedent in the case of *Little v. Board of County Commissioners*. Spot zoning is described as a provision of a general plan (i.e. Growth Policy, Neighborhood Plan or Zoning District) creating a zone which benefits one or more parcels that is different from the uses allowed on surrounding properties in the area. Below is a review of the three-part test in relation to this application and the character of the district and its peculiar suitability for particular uses.

i. *The zoning allows a use that differs significantly from the prevailing use in the area.*

The intent of the existing ‘SAG-10 Suburban Agricultural’ is to provide and preserve agricultural functions and to provide a buffer between urban and unlimited agricultural use. The purpose of the proposed ‘SAG-5 Suburban Agricultural’ is to provide and preserve smaller agricultural functions and to provide a buffer between urban and unlimited agricultural use. The property is located adjacent to the urban densities of the City of Whitefish. The existing SAG-10 does provide a buffer and the proposed SAG-5 zone would continue to provide a buffer between urban densities of the city to the west and the agriculture to north and east. The proposed SAG-5 would allow for similar uses to the existing SAG-10 zoning. The existing SAG-10 zoning allows for two permitted uses that are not allowed within the proposed SAG-5 zoning:

1. ‘*Dairy products processing, bottling, and distribution*’ and
2. ‘*Ranch Employee Housing.*’

There are three permitted uses in the SAG-10 zone that are allowed with a conditional use permit in the SAG-5 zone:

1. 'Cellular tower,'
2. 'Riding academy, rodeo arena,' and
3. 'Stable, public.'

Only two uses are allowed with a conditional use permit in SAG-5 that are not allowed within SAG-10:

1. 'Recreational facility, high impact,' and
2. 'Recreational vehicle park.'

The proposed zoning would not provide for uses that differ significantly from the prevailing uses in the area. The application states, "Approval of this zone change would bring it more in line with neighborhood densities and uses."

ii. *The zoning applies to a small area or benefits a small number of separate landowners.*

Using standard ArcGIS software staff determined that the subject property is located within a SAG-10 zoning district roughly 1,200 acres in size. The subject property is approximately 9.0 acres, roughly 0.75 % of the existing SAG-10 district. The R-1 zone to west is approximately 80 acres and the RR-1 zone to the north is approximately 70 acres. Located to the east of the subject property is a WA/WPUD zone approximately 11 acres and WRR-1 zone approximately 2.9 acres.

The property is owned by one landowner and would change the zoning on 9 acres of land. The proposed zoning map amendment would be similar in size to the neighboring City of Whitefish zoning districts but would be a small percentage of the existing SAG-10 County zoning districts.

iii. *The zoning is designed to benefit only one or a few landowners at the expense of the surrounding landowners or the general public and, thus, is in the nature of special legislation.*

The property is owned by one landowner however, the permitted and conditional uses listed within a SAG-5 zone are similar to the permitted and conditional uses in the current SAG-10 zone. The existing SAG-10 zoning allows for two permitted uses that are not allowed within the proposed SAG-5 zoning ('Dairy products processing, bottling, and distribution' and 'Ranch Employee Housing') and three permitted uses in the SAG-10 that are allowed with a conditional use permit in SAG-5 ('Cellular tower,' 'Riding academy, rodeo arena,' and 'Stable, public'). Furthermore, only two uses are allowed with a conditional use permit within the SAG-5 zone that are not allowed within the SAG-10 zone ('Recreational facility, high impact,' and 'Recreational vehicle park'). The zoning map amendment would allow uses that are typical of suburban agricultural zoning districts and similar to uses that exist within the suburban agricultural zoning of the surrounding area.

In summary, all three criteria must be met for the application to potentially be considered spot zoning. The proposed zoning map amendment does not appear to be at risk of spot zoning, as it does not appear to meet all three of the criteria.

Finding #8: The proposed zoning map amendment appears suitable for the character of the district and does not appear to constitute spot zoning because the proposed zone change would allow for the same uses existing within SAG-10 zoning neighboring the property and the size of the zoning district would be comparable to the size to the neighboring Whitefish zoning districts.

5. Conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

The subject property is located within the Rural Whitefish Zoning Districts and surrounded by suburban agricultural and residential zones. The Rural Whitefish Zoning District has many different zones but nearest the subject property is SAG-10, RR-1 and R-1 zoning. The property is also located near the City of Whitefish; the closest Whitefish zoning are '*WCR/PUD Country Residential*' and '*WRR-1 Low Density Resort Residential*.'

The land to the north of the subject property is Ptarmigan Village which contains multi-family residential. The properties zoned SAG-10 and R-1 are generally large lots with single family homes. The WCR zoning to the south contains single family residential on 1-2 acre lots. The WRR-1 properties do not appear to be developed at this time. The area around the property is generally forested with areas of steep slopes.

The character of the area surrounding the property is residential and forest. The uses allowed within the proposed SAG-5 zone are similar to what is currently allowed within the SAG-10.

Finding #9: This proposed zoning map amendment appears to conserve the value of buildings and encourage the most appropriate use of land in this particular location because the SAG-5 designation allows for similar uses to the existing SAG-10 and the character of the area surrounding the property is residential and forest which is in line with the proposed SAG-5 zone.

iv. Whether the proposed map amendment will make the zoning regulations, as nearly as possible, compatible with the zoning ordinances of nearby municipalities.

The subject property is near the city limits of Whitefish. Comments from the City of Whitefish indicate, "The proposed zone change from Sag 10 Suburban Agricultural to Sag 5 Suburban Agricultural proposed by David and Anna Marie Bailey for 121 and 135 Whitefish Lookout Road is not consistent with Whitefish's 2007 Whitefish City-County Growth Policy Future Land Use Map. The property's Future Land Use is designated as Rural, which affords 10 to 20 acre minimum lot sizes. Thank you for the opportunity to comment."

The City does not have a zoning use district with a similar minimum lot size to either the current SAG-10 zone or the proposed SAG-5 zone. The closest City of Whitefish zones in proximity to the subject are WRR-1 and WA.

The WRR-1 zone which allows for agricultural uses has a minimum lot size of 1 acre. According to Section 11-2N-1 of the Whitefish Zoning Ordinance the WRR-1 district is, *“The WRR-1 district is intended to provide a low density setting for secondary residential resorts.”* The permitted and conditional uses within the City’s WRR-1 zone allows for different uses than both the proposed SAG-5 and existing SAG-10.

If the property was located within the City the zoning designation would likely be WA. The WA zone which allows for agricultural uses has a minimum lot size of 15 acres. According to Section 11-2A-1 of the Whitefish Zoning Ordinance the WA district is, *“The district is intended for areas for silviculture, agricultural functions, outdoor recreation purposes, open spaces or future development, and for detached single-family homes with customary farm and/or accessory buildings situated in a setting conducive to a rural lifestyle.”* The permitted and conditional uses within the City’s WA zone allows for many of the uses that are permitted and conditionally permitted within the proposed SAG-5 and existing SAG-10. The proposed SAG-5 zone has a minimum lot size requirement less than the minimum lot size of the WA zones.

Finding #10: The proposed map amendment appears to be, as nearly as possible, compatible with the zoning ordinance of Whitefish because the permitted uses within the SAG-5 zone are similar to the permitted uses within the City’s WA zone and the city does not have zone with similar lots to the existing SAG-10 or the proposed SAG-5.

V. SUMMARY OF FINDINGS

- 1) The proposed zoning map amendment generally complies with the Flathead County Growth Policy because applicable goals, policies and text appear to generally support the request and the Suburban Agriculture land use designation identified by the Designated Land Use Map portrays only zoning which was established at the time the map was created and is not a future land use map.
- 2) The proposed zoning map amendment will likely not impact safety from fire and other danger because even though the property is located in the WUI and a county wide priority area, the property would likely be served by both the Whitefish Rural Fire Department and Big Mountain Fire Department, thinning would be required if the property is subdivided and the property is located outside the 100-year floodplain.
- 3) The proposed amendment appears to not have a negative impact on public health, public safety and general welfare because the property is served by the Flathead County Sheriff and likely both the Whitefish Rural Fire Department and Big Mountain Fire Department and the SAG-5 zoning would continue to serve as a buffer between urban densities and suburban agriculture densities.
- 4) The proposed amendment would facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements because the property

is accessed via Whitefish Lookout Road, the Road and Bridge Department did not have any concerns regarding the proposal, Whitefish Lookout Road could accommodate the slight increase in traffic, any new development would require review through the Sanitation in Subdivision Act, it is anticipated that the school districts would have capacity and 5 acre lots would not require parkland during the subdivision review process.

- 5) The proposed zoning map amendment would provide adequate light and air to the subject property because future development would be required to meet the bulk, dimensional, setbacks and lot coverage requirements within the proposed SAG-5 designation.
- 6) Effects on the motorized and non-motorized transportation system will be minimal because the property is accessed via Whitefish Lookout Road, the Road and Bridge Department did not have any concerns regarding the proposal, Whitefish Lookout Road could manage the slight increase in traffic, and a future subdivision would require a bike/pedestrian easement on Big Mountain Road.
- 7) The proposed zoning map amendment does appear to be compatible with urban growth in the vicinity of cities and towns because the Whitefish City-County Growth Policy designates the land as rural, would allow for farmlands, pasture lands and timber harvesting as permitted uses and SAG-5 is defined as a district to provide and preserve smaller agricultural functions and to provide a buffer between urban and unlimited agricultural uses, encouraging separation of such uses.
- 8) The proposed zoning map amendment appears suitable for the character of the district and does not appear to constitute spot zoning because the proposed zone change would allow for the same uses existing within SAG-10 zoning neighboring the property and the size of the zoning district would be comparable to the size to the neighboring Whitefish zoning districts.
- 9) This proposed zoning map amendment appears to conserve the value of buildings and encourage the most appropriate use of land in this particular location because the SAG-5 designation allows for similar uses to the existing SAG-10 and the character of the area surrounding the property is residential and forest which is in line with the proposed SAG-5 zone.
- 10) The proposed map amendment appears to be, as nearly as possible, compatible with the zoning ordinance of Whitefish because the permitted uses within the SAG-5 zone are similar to the permitted uses within the City's WA zone and the city does not have zone with similar lots to the existing SAG-10 or the proposed SAG-5.

VI. CONCLUSION

Per Section 2.08.020(4) of the Flathead County Zoning Regulations (FCZR), a review and evaluation by the staff of the Planning Board comparing the proposed zoning map amendment to the criteria for evaluation of amendment requests found in Section 2.08.040 FCZR has found the proposal to generally comply with the review criteria, based upon the draft Findings of Fact presented above. Section 2.08.040 does not require compliance with all criteria for evaluation, only that the Planning Board and County Commissioners should be guided by the criteria.

Planner: EKM